

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF STEUBEN

TIM HARKENRIDER, GUY C. BROUGHT,  
LAWRENCE CANNING, PATRICIA CLARINO,  
GEORGE DOOHER, JR., STEPHEN EVANS,  
LINDA FANTON, JERRY FISHMAN, JAY  
FRANTZ, LAWRENCE GARVEY, ALAN  
NEPHEW, SUSAN ROWLEY, JOSEPHINE  
THOMAS, AND MARIANNE VIOLANTE,  
Petitioners,

Index No.:  
E2022-0116CV

v.

GOVERNOR KATHY HOCHUL, LIEUTENANT  
GOVERNOR AND PRESIDENT OF THE SENATE  
BRIAN A. BENJAMIN, SENATE MAJORITY  
LEADER AND PRESIDENT PRO TEMPORE OF  
THE SENATE ANDREA STEWART-COUSINS,  
SPEAKER OF THE ASSEMBLY CARL HEASTIE,  
NEW YORK STATE BOARD OF ELECTIONS,  
AND THE NEW YORK STATE LEGISLATIVE  
TASK FORCE ON DEMOGRAPHIC RESEARCH  
AND REAPPORTIONMENT,  
Respondents.

**BRIEF OF THE UPSTATE JOBS PARTY AND UNITE NEW YORK AS AMICUS  
CURIAE**

Upstate Jobs Party (“UJP”) and Unite New York (“UNY”) are two related entities that form one independent body under New York law. This independent body is currently circulating independent nominating petitions under the brand name Unite. This independent body is circulating petitions on behalf of candidates for governor, senate, and state assembly. UJP and UNY submit this brief in support of the Libertarian Party’s Motion to Intervene and in support of their requested relief. UJP and UNY further submit this brief to inform the Court about various issues pertaining to the ability of independent bodies to comply with New York’s statutory

requirements for the submission of independent candidate nominating petitions, and to urge the Court to consider alternative relief sufficient to enable independent bodies to qualify their candidates for statewide office on the November 2022 general election ballot.

New York law sets a high signature threshold and tight time constraints on the circulation and filing of nominating petitions by independent candidates. Statewide independent candidate nominating petitions must be signed by at least 45,000 New York voters, with at least 500 signatures drawn from each of thirteen of New York's 26 congressional districts. N.Y. Elec. § 6-142(1). Independent candidates are not permitted to begin collecting signatures until six weeks before the filing deadline; signatures collected earlier than six weeks out are not counted. *Id.* § 6-138(4). Petitions can then be filed only within a narrow seven-day window “not earlier than twenty-four weeks and not later than twenty-three weeks preceding” a general election. *Id.* § 6-158(9). In 2022, the signature collection period began on April 19, 2022, and the petition filing period lasts from May 24 through May 31, now less than two weeks away. Moreover, independent candidates cannot collect signatures from any registered voter who has already signed another petition “designating or nominating . . . a different person for the same office.” *Id.* § 6-138(1).

Ordinarily, independent candidates for statewide office would be able to comply with these statutory requirements, but multiple factors have conspired to make the timely collection and submission of nominating petitions impossible this year. First and foremost among these factors is the continuing failure of New York to adopt a final congressional district map that can withstand judicial scrutiny. On April 27, 2022, a mere eight days into the signature collection period for independent candidates, the New York Court of Appeals held that New York's congressional and state senate maps were unconstitutional. *See Matter of Harkenrider v. Hochul*, No. 60, 2022 N.Y. LEXIS 874, at \*2 (Apr. 27, 2022). The Court of Appeals remanded the case to the trial court with

an instruction to work with a special master to devise constitutionally compliant senate and congressional maps “with all due haste,” but did not prescribe a specific deadline for map enactment or order any additional relief to accommodate candidates running for office this year. *Id.* at \*36-37.

On May 5, 2022, after more than two weeks of the six-week signature collection period had already elapsed, the trial court released an advisory opinion declining to extend the petition submission deadline for independent statewide candidates or to lower their signature threshold from the statutorily required 45,000. *See Adv. Op., Harkenrider v. Hochul*, Index No. E2022-0116CV, at \*2 (May 5, 2022). The court indicated that a new congressional district map would be finalized no later than May 20, 2022—*i.e.*, eleven days before the close of the petition filing period. On May 11, 2022, the trial court issued an order extending the filing period for independent candidates for Congress and State Senate to June 27 through July 5, but it did not alter any deadlines applicable to independent *statewide* candidates. *See Order, Harkenrider v. Hochul*, Index No. E2022-0116CV, at \*4 (May 11, 2022). Even assuming that a final congressional district map is enacted by the date specified by the trial court, that would still leave independent statewide candidates with less than two weeks to collect the statutorily required number of signatures from the statutorily required number of congressional districts.

Additionally, independent candidate signature collection efforts have also been stymied by two coinciding natural disasters. First, the State of New York has experienced a steady increase in COVID-19 cases for the last two months, from a daily average of 1,644 cases on March 4 to a current daily average of 9,544 on May 10.<sup>1</sup> The increased risk of infection has understandably

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<sup>1</sup> *Tracking Coronavirus in New York: Latest Map and Case Count*, N.Y. Times <https://www.nytimes.com/interactive/2021/us/new-york-covid-cases.html> (last visited May 11, 2022).

made many New Yorkers reluctant to interact with petition circulators who they do not know. In fact, the CDC has designated all but one county in New York as medium to high risk for COVID infections. On May 13, 2022, the New York Department of Health stated that the CDC had increased the number of New York counties that were high risk from 36 to 45.<sup>2</sup> During the 2020 general election, the Governor acted to reduce the number of signatures required on independent candidate nominating petitions to 30,000 to accommodate the difficulty of collecting signatures during a deadly pandemic;<sup>3</sup> this year, however, no such relief has been forthcoming even though the COVID-19 state of emergency declared by the Governor remains in effect.<sup>4</sup>

In the midst of this COVID-19 surge, upstate New York was also hit by a late-season snowstorm on April 19. Binghamton, for example, reported record snowfall and declared a state of emergency. Additionally, some 150,000 New York residents were without power. This occurred on the very first day of signature collection, further hampering collection efforts for an entire week.<sup>5</sup>

Hence, independent statewide candidates are currently faced with a new statutory requirement that they collect at least 45,000 signatures overall—three times the previous statutory

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<sup>2</sup> See *State Department of Health Recommends Those Living In High-Risk Counties or Personally At-Risk Wear Masks Indoors During Surge According to CDC Recommendations*, (N.Y. State Dept. of Health, May 13, 2022) available at [https://health.ny.gov/press/releases/2022/2022-05-13\\_covid\\_mask\\_recommendation.htm](https://health.ny.gov/press/releases/2022/2022-05-13_covid_mask_recommendation.htm) (last visited May 16, 2022)

<sup>3</sup> N.Y. State Bd. of Elections, *Election Law Update 2020* 69, <https://www.elections.ny.gov/NYSBOE/download/law/2020ElectionLawUpdate.pdf> (last visited May 13, 2022).

<sup>4</sup> Gov. Kathy Hochul, Exec. Order 11.5, (Apr. 15, 2022), available at: <https://www.governor.ny.gov/executive-order/no-115-declaring-disaster-emergency-state-new-york>.

<sup>5</sup> Jesus Jiménez & Eduardo Medina, *April Snowstorm Knocks Out Power Across Northeast*, N.Y. Times (Apr. 19, 2022), <https://www.nytimes.com/2022/04/18/us/northeast-snowstorm.html> (last visited May 11, 2022).

amount—and 500 signatures from thirteen of New York’s congressional districts by the end of this month, even though no constitutional congressional district map is currently in place and likely will not be before May 20. *See Adv. Op., Matter of Harkenrider*, Index No. E2022-0116CV, at \*2. And independent bodies must satisfy this new statutory requirement while competing with record-breaking snowstorms and an increasing spread of disease that has killed more than one million Americans.

Even if independent bodies can safely navigate these two natural disasters, petition circulators for independent candidates have no way of knowing where district lines will be drawn, and in the absence of any relief will be forced to guess. They are also collecting signatures at the same time and for the same offices as circulators of party designating petitions; according to state law, if a registered voter signs both an independent candidate nominating petition and a party designating petition, their signature on the latter will take precedence *even if signed later in time*. N.Y. Elec. § 6-138(1). Furthermore, there has been no guarantee forthcoming from any state court that signatures collected *before* the May 20 release of a final map will be valid, even if by sheer luck they were collected within the “correct” district. Scores of already collected signatures could be rendered uncountable in the congressional districts where they were collected, and independent candidates would be left with barely more than one week in which to eliminate any deficit. The relief granted on May 11 by the trial court has only made matters worse, because it ensures that independent bodies must have circulators in the field during two different timeframes—once during the final week of May for their statewide candidates, and then again in June for their congressional and state senate candidates. Generally, to save on time and money, petition circulators for independent bodies circulate petitions for all of the independent body’s candidates at once. Additionally, independent body candidates for statewide office generally work with down-

ballot candidates circulating petitions in their local districts to obtain a sufficient number of signatures to get their names on the independent ballot line. Accordingly, this Court's order staggering the petition circulation periods for different offices causes a costly duplication of efforts.

Additionally, petitioners are struggling to find willing signers, as they are finding voters confused about the process due to the multiple court actions and near-daily decisions being announced. *See Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) ("Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.").

The current state of play is also a nightmare for election administrators and those state and local officials tasked with verifying petitions. Like independent bodies, administrators lack judicial guidance on whether signatures collected before May 20 should be counted towards the 500-signature threshold for the congressional districts in which they were collected. Administrators also lack clear guidance on whether they should count signatures on independent nominating petitions when the same voter later signed a party designating petition for a candidate for the same office, although state law seems to indicate that independent bodies always lose in such a scenario. The different signature collection periods for independent candidates dependent on the office for which they are competing adds an additional logistical headache. The lack of definitive answers to these questions will inevitably lead to the application of inconsistent standards, thereby imperiling the federal equal protection rights of independent statewide candidates.

Under New York law, independent statewide candidate signature collection depends on a single baseline condition: An approved final congressional map that enables candidates to collect the requisite number of signatures from at least half of the State's congressional districts with

certainty that they are collecting signatures in the right places. Although the trial court extended signature collection and petition filing deadlines for congressional and state senate candidates, it did not do so for independent statewide candidates even though their signature collection efforts similarly depend on an approved congressional district map. The different signature collection periods impose an additional burden on independent bodies by forcing them to collect signatures for different candidates at different times, as opposed to asking one person to sign petitions for all of the independent body's candidates at one time. Independent bodies cannot even be assured that their diligence in signature collection will be rewarded, because state law appears to privilege signatures on party designating petitions even if collected after identical voter signatures on independent nominating petitions. *Compare* N.Y. Elec. Law § 6-138(1) (stating that a signature on an independent nominating petition is invalid if the same signatory appears on another independent nominating or party designating petition); *with* N.Y. Elec. Law § 6-134(3) (stating that a signature on a party designating petition is invalid if it appears on another party designating petition bearing the same date, but if the signature appears on different party designating petitions with different dates, the earlier dated petition remains valid).

Accordingly, extending the independent candidate signature collection period so that it begins *after* the party designating petition filing deadline will enhance efficiency for independent bodies, by enabling them to collect signatures for all offices at the same time, while also reducing the administrative burden for election administrators by reducing the overall number of duplicate signatures and the possibility of inconsistent standards for the rejection thereof.<sup>6</sup> Something must

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<sup>6</sup> The U.S. Court of Appeals for the Second Circuit has previously acknowledged that New York's petitioning process places a heavy burden on small parties. Finding even a few signatures can be like finding a needle in a haystack. Amici here do not concede that New York's petitioning process is consistent with the Fourteenth Amendment's Equal Protection Clause. For purposes of

yield, or independent candidates will be unfairly punished for the failure of the New York State Independent Redistricting Commission to adopt a constitutional congressional map. UJP asserts that the relief requested by the Libertarian Party of New York in its Motion to Intervene is a good start and would eliminate prejudice to independent statewide candidates without necessitating further changes to the State's congressional map. However, although an extension of the May 31 deadline and a reduction in the 45,000 signature requirement would certainly help, that relief alone would not solve every problem without also ensuring that independent bodies are able to collect signatures for all their supported candidates at the same time and begin collection after party designating petitions have been circulated and filed.

Accordingly, UJP urges the Court to consider the following amendments to the Court's May 11, 2022 order:

1. A consolidation of petition filing deadlines for independent statewide candidates with the deadlines for independent congressional and state senate candidates;
2. Moving the start of the independent nominating petitioning period to June 14, 2022, after Party designating petitions have been circulated and filed, with the independent nominating petition filing period during the week of July 19, 2022 through July 26, 2022;
3. A reduction in the total required number of signatures for an independent statewide candidate nominating petition from the statutory threshold of 45,000 to 15,000 (which was the statutorily required number of signatures for decades before the law was revised in 2020);

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this brief, however, Amici are attempting to abide by the rules currently in place. *See Lerman v. Board of Elections*, 232 F.3d 135, 146-48 (2d Cir. 2000).



4. A reduction in the number of signatures required from each congressional district from the statutory threshold of 500, or a reduction in the number of congressional districts from which signatures must be collected from the statutory threshold of thirteen; and
5. An order that all signatures collected on independent nominating petitions before the release of a final congressional district map on May 20 and that were otherwise valid under the district lines in place prior to May 20, are valid.

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Respectfully submitted,

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